

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place, Room 503
Boston, MA 02108
(617) 727-2293

SHAWN M. QUAGLIETTA,
DANIEL J. FLEMING,
MICHAEL F. MCCARTHY,
Appellants

v.

Docket Nos.: E-12-158
E-12-159
E-12-160

HUMAN RESOURCES DIVISION,
Respondent

Appellants:

Pro se

Appearance for Respondent:

Tsuyoshi Fukuda, Esq.
Human Resources Division
Legal Department
One Ashburton Place, 2d Floor
Boston, MA 02108

Commissioner:

Cynthia A. Ittleman

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

By letter dated May 8, 2012, the pro se Appellants, Shawn M. Quaglietta, Daniel J. Fleming, and Michael F. McCarthy (individually “Appellant”; collectively “Appellants”) filed appeals (E-12-158, 159 and 160, respectively) with the Civil Service Commission (“Commission”) contesting the decision of the state’s Human Resources Division (“HRD” or “Respondent”) to revoke and/or deny a request to extend the eligible lists for promotion to Lieutenant (regarding Mr. Quaglietta) and to Captain (regarding Mr. Fleming and Mr. McCarthy). As the three appeals are related, they were considered together.¹ A pre-hearing conference was held on June 12, 2012 to consider the three appeals and the Commission granted

¹ There is no record of any objection in this regard.

the City of Lawrence (“City”)’s oral motion to intervene. On June 20, 2012, HRD filed a Motion for Summary Decision (“Motion”) regarding all three appeals. On July 19, 2012, the City filed an Opposition to the Motion (“Opposition”). The pro se Appellants did not submit written opposition to the Motion but submitted documents in support of their positions. A hearing on the motion was held on September 12, 2012.² The hearing was digitally recorded. For the reasons stated herein, the Respondent’s Motion is granted and the appeal is dismissed.

Findings of Fact

Based on the oral arguments of the Appellants, HRD, and the City; all matters filed in these cases and documents attached thereto; and taking administrative notice of applicable statutes, caselaw, regulations and policies, a preponderance of the evidence establishes the following findings of fact:

1. On or about May 15, 2009, an eligible list for the position of Police Sergeant (in Lawrence) was established as a result of a promotional examination given in October 2008, announcement number 5666 (“Sergeant exam”). (Motion Appendix A)
2. On or about May 15, 2009, an eligible list for the position of Police Lieutenant (in Lawrence) was established as a result of a promotional examination given in October 2008, announcement number 5669 (“Lieutenant exam”). (Motion Appendix B)
3. On or about May 15, 2009, an eligible list for the position of Police Captain (in Lawrence) was established as a result of a promotional examination given in October 2008, announcement number 5670 (“Captain exam”). (Motion Appendix C)
4. As a result of the Lieutenant exam, Appellant Quaglietta was ranked first on that eligible list. (Motion Appendix D)

² The Appellants appeared at the hearing pro se but stated that they are “on the same page” as the intervenor City, which was represented by counsel.

5. As a result of the Captain exam, Appellant Fleming was ranked second on that eligible list. (Motion Appendix E)
6. As a result of the Captain exam, Appellant McCarthy was ranked third on that eligible list. (Motion Appendix E)
7. On September 15, 2011, Bruce Howard, the Director of Operations of the Civil Service Unit at HRD, sent a memorandum to Police Department Appointing Authorities and Police Chiefs in several communities including Lawrence. The memorandum informed the recipients that eligible lists for the communities listed, including the Lawrence Police, Sergeant, Lieutenant and Captain lists, were due to be revoked on October 1, 2011. The memorandum states, *inter alia*, “In accordance with the Human Resources Division (HRD) ongoing revocation policy the following eligible lists resulting from the **October 2008** examination will be revoked on **October 1, 2011.**” (Motion Exhibit H)(emphasis in original)
8. In a letter dated September 27, 2011, the City’s then-Mayor, William Lantigua, wrote to the Personnel Administrator, citing G.L. c. 31, § 25 and then stating,

“I have a situation on the Lawrence Police Department involving a superior officer list. A promotional examination for the position of Permanent Sergeant, examination announcement number (sic) was established on October 2008. The list is about to be revoke (sic) on October 1, 2011. Due to the city’s current financial conditions, the city was not able to promote from the list and would appreciate that the list be extended. As the City’s Appointing Authority, I hereby request that the eligibility list for Permanent Police Sergeant be extended until a permanent promotion can be made, but no later than a new eligibility list is certified after the upcoming Police Sergeant promotional exam in 2012.”
(Motion Exhibit I)³

³ Attorney O’Connor, representing the Lawrence Appointing Authority in this matter, was not involved in drafting the Mayor’s September 27, 2011 letter.

9. On September 29, 2011, Appellant Quaglietta, who was a Sergeant then and at the time of this appeal, who was first on the Lieutenant list, hand-delivered a letter or memorandum to HRD stating, *inter alia*,

“ ... To date there has been no movement on any of the above [Sergeant, Lieutenant and Captain] lists due to budgetary restraints the city has been experiencing. It has been brought to my attention that the City of Lawrence has asked for an extension for the current Sergeant list which is set to expire on October 1, 2011. I would ask that Civil Service give the same consideration to the Lieutenant and Captain’s list also about to expire on October 2011. If all three lists were to expire the city of Lawrence would not have the ability to promote until another test is offered. The City of Lawrence did not offer any promotional exams in 2011 which would mean that the earliest someone could be promoted would be the spring of 2013....”
(Motion Exhibit J)

10. On or about the time Mayor Lantigua and Mr. Quaglietta sent their letters to HRD in September 2011, and until matters improved in the spring of 2012, at least some of the Superior Officers and the Mayor had a “contentious” relationship. (Appellants’ argument at hearing)
11. The HRD Civil Service Unit took no action on Mr. Quaglietta’s September 29, 2011 memorandum. (Motion)
12. On September 30, 2011, Mr. Howard responded to Mayor Lantigua’s September 27, 2011 letter and conditioned the extension of the Sergeant list “... upon the receipt of a request to participate in the next examination cycle []” by October 7, 2011. (Motion Exhibit K)
13. Mr. Howard based his decision to conditionally extend the Lawrence Police Sergeant list on the fact that Lawrence has been an active participant in the Sergeant promotional examinations over the years and because the decision in the Lopez v. City of Lawrence, et al (U.S.D.C., C.A. No. 07-11693-GAO) case, which challenged the validity of the

Sergeant promotional examination based on alleged discrimination, was anticipated soon.⁴ (Motion Exhibit L (affidavit of Bruce Howard); Administrative Notice)

14. Pursuant to Mr. Howard's conditional extension of the Sergeant list, on October 6, 2011, Frank Bonet, the Lawrence Personnel Director, faxed a Form 13 to HRD requisitioning a promotional Sergeant examination. (Motion Exhibit M)

15. Thereafter, Mr. Howard extended the Lawrence Police Sergeant eligible list " ... until a new list is established for the same position for which the original list was established." (Motion Exhibits K and L)⁵

16. By letter dated October 14, 2011, HRD notified the Massachusetts House of Representatives and Senate, "[i]n compliance with section 25 of Chapter 31 of the Massachusetts General Laws, enclosed herewith is a listing of Civil Service public safety police promotional lists that have been revoked by the Personnel Administrator as of October 1, 2011. The Personnel Administrator has determined that the effective maintenance of the merit system requires such revocation in order to eliminate out-of-date eligibility lists." (Motion Exhibit N) The attachment indicates that the lists for Lieutenant and Captain in Lawrence were revoked. (Id.)

17. "Prior to the 2011 list revocations, HRD received a total of five requests to extend Police Sergeant eligible lists (Boston, Lawrence, Billerica, Canton and Dedham). HRD granted extensions to Boston and Lawrence since they were both defendants in the Lopez v. City of Lawrence, et al (U.S.D.C., C.A. No. 07-11693-GAO) case and were regular participants in promotional exams, but revoked the sergeant lists for Billerica, Canton and Dedham October 1, 2011, pursuant to an HRD revocation policy. Billerica, Canton and

⁴ As of March 14, 2014, the Lopez case is still pending in federal court. (Administrative Notice)

⁵ HRD stated at the hearing that the Lawrence Sergeants list was extended until roughly May, 2013.

Dedham were not defendants in the Lopez case.”⁶ (Motion Exhibit L (Affidavit of Bruce Howard))

18. By letter dated April 14, 2012 to the Personnel Administrator, Mayor Lantigua asked HRD to extend the Lieutenant and Captain lists from the 2008 exam stating, in part, that when the Sergeant list was extended in the fall of 2011, “ ... the Captain and Lieutenant list should have also been extended....” (Motion Exhibit O). This letter states further that, “As you are aware, the City of Lawrence has experienced some difficult fiscal times in 2010 and I needed to demote several officials. As of April 1, 2012, I was able to reinstate these officials. However, should a situation arise and I need to fill a Captain or Lieutenant, we don’t have an active list right now. This is a big hardship for the City of Lawrence, and I respectfully ask that you please extend the Captain and Lieutenant list to allow future appointments to be made similar to the Sergeant list.” (Id.)
19. By letter dated April 30, 2012, Mr. Howard, for HRD, denied Mayor Lantigua’s April 14, 2012 letter requesting extension of the Lieutenant and Captain lists, stating, *inter alia*, “ ... (HRD) is unable to extend the eligibility for an exam administered in 2008 which in accordance with Massachusetts General Law, Chapter 31, Section 25, has since been revoked ... on October 1, 2011, in accordance with HRD revocation policy. To date you have not signed up for the next exam scheduled for October 27, 2012. We encourage you do to so (sic).” (Motion Exhibit P)

⁶ I take administrative notice that in regard to Billerica, HRD’s denial of the request to extend a promotional list was appealed to the Commission (Town of Billerica, Craig Grogan and John Harring v. HRD, Docket No. E-12-99 (May 31, 2012), the Commission dismissed the appeal on a motion, the Commission’s decision was appealed to court, and the court remanded the case to the Commission for a hearing on certain matters. Billerica v. Civil Service Commission et al, Middlesex Superior Court, C.A. No. 12-02357 (May 13, 2013). The Commission subsequently conducted a hearing. However, before a decision was issued, the parties requested and were granted 310 relief.

20. The City has participated in promotional Sergeant examinations in 1984, 1987, 1989, 1992, 1995, 1997, 1999, 2001, 2004, 2007, and 2009. (Motion Exhibit F)

21. The Appellants filed the instant appeals. (Administrative Notice)

DISCUSSION

Summary Decision Standard

Section 1.01(7)(h) of the applicable Standard Adjudicatory Rules of Practice and Procedure at 801 CMR provides that, “When a Party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for summary decision on the claim or defense. If the motion is granted as to part of a claim or defense that is not dispositive of the case, further proceedings shall be held on the remaining issues”. 801 CMR 1.01(7)(h). The notion underlying the summary decision process in administrative proceedings parallels the civil practice under Mass.R.Civ.P.56, namely, when no genuine issues of material fact exist, the agency is not required to conduct a meaningless hearing. See Catlin v. Board of Registration of Architects, 414 Mass. 1, 7 (1992); Massachusetts Outdoor Advertising Counsel v. Outdoor Advertising Board, 9 Mass.App.Ct. 775, 782-83 (1980).

Applicable Civil Service Law

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on “[b]asic merit principles.” Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259 (2001), citing Cambridge v. Civil Serv. Comm’n, 43 Mass.App.Ct. at 304. “Basic merit principles” means, among other things, “assuring fair treatment of all applicants and employees in all aspects of

personnel administration” and protecting employees from “arbitrary and capricious actions.”

G.L. c. 31, § 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

An appointing authority that wants to make an original appointment in the official service submits a requisition to the administrator. HRD then certifies from the eligible list of names of people for consideration for appointment by the appointing authority pursuant to G.L. c. 31, § 25. See G.L. c. 31, § 6. Section 25 of the statute addresses the duration of the lists and the administrator’s role in that regard. Specifically, it provides, in relevant part,

Persons on an eligible list shall be eligible for certification from such list for such period as the administrator shall determine, but in any event not to exceed two years, unless one of the following exceptions applies: (1) such eligibility is extended by law because such persons are in the military or naval service; (2) the administrator is temporarily enjoined by a court order from certifying names from an eligible list, in which case eligibility of persons on such list shall be extended for a period equal to the duration of such order; or (3) no new list is established, in which case eligibility of all persons on such list shall be extended until a new list is established for the same position for which the original list was established; provided, however, that the administrator may revoke the eligibility of the entire list or of any persons on such list subsequent to said two-year period if he shall determine that the effective maintenance of the merit system so requires such revocation and, provided further, that a written notice and explanation for said revocation is sent to the clerks of the senate and house of representatives.
(G.L. c. 31, § 25)

Thus, this portion of section 25 affords HRD considerable discretion regarding the duration of lists, while also indicating in this regard that HRD has a duty to protect the merit system at large. Further, it is well established that candidates have a limited interest in their placement on the lists. Specifically, caselaw categorizes the rights of candidates who pass civil service exams as “limited” and provides that they do not have a “vested right in their particular position on the list.” Callanan v. Personnel Administrator for the Commonwealth, 400 Mass. 597, 601 (1987).

Pursuant to G.L. c. 31, § 2(b), the Commission has certain powers and duties.

Specifically, in regard to the instant case, the Commission has the power, in pertinent part, to

... (b) [t]o hear and decide appeals by a person aggrieved by any decision, action, or failure to act by the administrator, except as limited by the provisions of section twenty-four relating to the grading of examinations

(Id.)

The requirement in section 2(b) that a person is aggrieved is specific. The statutes provides that,

... [n]o person shall be deemed to be aggrieved under the provisions of this section unless such person has made specific allegations in writing that a decision, action, or failure to act on the part of the administrator was in violation of this chapter, the rules or basic merit principles promulgated thereunder and said allegations shall show that such person's rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status.

(Id.)

Thus, in order for the Commission to have jurisdiction over an appeal pursuant to section 2(b), the person filing the appeal has to have already been aggrieved. The statute does not address anticipated grievances.

The Parties' Arguments

HRD avers that it could not have extended the eligible list of candidates for the positions of Lieutenant and Captain for Lawrence because it would have extended those lists beyond three years from the date of the examination. Section 25 of the civil service statute limits the lists to two years and HRD's established policy precludes lists lasting longer than three years from the examination. Moreover, HRD has an ongoing policy to not extend lists beyond three years since the applicable examination to ensure maintenance of the merit system, as attested by the affidavit of Bruce Howard at HRD. Cited caselaw indicates that HRD has "wide discretion" in regard to list administration and that candidates do not have "vested rights" in their positions on a list.

HRD also asserts that the City is not aggrieved in that it had no known vacancies and/or funding to make promotions for Lieutenant and Captain positions at the pertinent time. Indeed,

HRD argues, the Mayor's letter of April 2012 states that he seeks to extend the applicable lists in the event that promotion vacancies become available. Further, HRD asserts that Mayor Lantigua's September 2011 letter specifically and exclusively requested the extension only of Sergeants list, which list HRD extended.

HRD states that it acted reasonably, not in an arbitrary and capricious manner, when it denied Mayor Lantigua's April 2012 request to extend the Lieutenant and Captain lists from the 2008 exam while granting Boston's request for extensions. In addition to its established policy not to extend lists beyond three years from the date of the exam, HRD asserts that its determination also reflected, among other significant matters, the timeliness of Boston's extension requests, as well as Boston's involvement in the Lopez federal court case regarding the validity of the Sergeant exam, about which a decision was anticipated soon that may affect the parties. HRD granted Mayor Lantigua's timely request in September 2011 to extend the Sergeant list also in view of the City's involvement in the Lopez case. It only denied the Mayor's April 2012 request to extend the Lieutenant and Captain lists many months after those lists had been revoked. Therefore, HRD avers, it acted reasonably when it denied as untimely the City's request to extend the other lists.

Finally, HRD asserts that its lack of response to Mr. Quaglietta's September 2011 hand-delivered letter does not render HRD's actions arbitrary and capricious. HRD cannot respond to individual employees' requests in this regard to "unilaterally" extend a list. If, as the Appellants argued, the City intended, in the Mayor's September 2011 letter to HRD, to infer that the Lieutenant and Captains lists should be extended in addition to the Sergeant list, the Appellants could have worked with the City in that regard. That the Appellants did not do so, and contacted HRD instead, further indicates that the City did not want the other lists to be extended.

The Appellants and the City argued at the motion hearing that on September 27, 2011, prior to the revocation of the 2008 exam promotional lists, the Mayor requested that HRD extend the Sergeant list but that the letter also refers to a superior officer list, and that the Commission should understand this reference in the letter to mean that the Mayor sought extension of the Sergeant, Lieutenant, and Captain lists. Further, the Appellants aver that they hand-delivered a letter to HRD on September 29, 2011 specifically asking HRD to extend the Lieutenant and Captain lists, as well as the Mayor's request to extend the Sergeant list and that HRD should have contacted the City in this regard. The Appellants state that HRD never responded to their September 29 letter and that, therefore, they did not know that the Lieutenant and Captain lists had not been extended until the demotions that resulted from the City's financial difficulties were reversed in the spring of 2012. In addition, the Appellants state that the Superior Officers and the Mayor had "contentious" relations about that time. Relations subsequently improved on or about the time that the demotions were reversed, the Appellants assert, at which time the Mayor wrote to HRD, stating that he wanted to clarify his September 2011 letter to HRD regarding extension of the lists. The Appellants highlight a specific part of the Mayor's April 2012 letter, which states,

... In September 2011, I wrote to you looking to extend the Superior Officers list in the City of Lawrence. Unfortunately, I was not fully clear in my request as the only list that was extended was the Permanent Sergeant list. At that time, the Captain and Lieutenant list should have also been extended. ...
(Motion Exhibit O)

For these reasons, the Appellants argue, the Mayor intended his September 2011 request to extend the Sergeant list to include a request to also extend the Lieutenant and Captain lists, the Mayor's April 2012 reflects the Mayor's earlier, timely request to in fact request the extension of all three lists, and HRD erred when it denied the request.

The Appellants also argue that HRD extended all three lists for Boston (Sergeants, Lieutenants, and Captains) and that, therefore, HRD's refusal to extend the same lists for Lawrence is arbitrary and capricious. Since HRD said that it extended Boston's lists based on the Lopez federal court case and Lawrence would be affected by a decision in Lopez, all three of the City's lists should have been extended as they were for Boston. Since HRD failed to do so, the Appellants assert that they are entitled to relief, in the nature of extended lists; they add that they have not sat on their rights and registered to take the next promotional exam.

Finally, the Appellants assert that a couple of weeks prior to the motion hearing in September 2012, the Mayor and the Superior Officers concluded an agreement which adds two (2) Captain positions, one (1) Lieutenant position, and two (2) Sergeant positions. The City concurred but added that it is the Appointing Authority who determines when there are vacancies, when to make promotions, and when funding is available for promotions. The City adds that it too is aggrieved since it is unable to make promotions now because of HRD's decision and that the City should not have to wait until a list is generated after a more recent exam in order to make promotions.

Analysis

HRD has shown, by a preponderance of the evidence, that it acted reasonably in consonance with civil service law when it denied a request to extend the City's Lieutenant and Captain eligible lists and that there is no genuine issue of material fact precluding summary decision in this regard. Mayor Lantigua's September 27, 2011 letter, sent prior to the revocations of the lists from the 2008 exams, clearly and unambiguously requested extension only of the Sergeant list. Indeed, Mr. Quaglietta's September 29, 2011 letter notes that the Mayor's letter, two days earlier, only requested extension of the Sergeant list and he (Mr.

Quaglietta) was asking HRD to extend the other two lists. Further, at the time of Mayor Lantigua's September 2011 letter, and apparently for months thereafter, the Appellants acknowledge that relations between the Superior Officers and Mayor Lantigua were "contentious" and that they were not in the position to ask the Mayor if he would request the extension of the Lieutenant and Captain lists. Further, as a follow up to the Mayor's September 29 letter, the City submitted the paperwork necessary specifically to extend only the Sergeant list in order to obtain HRD's approval. In view of these matters, I cannot infer that Mayor Lantigua intended in his September 2011 letter to request the extension of the Lieutenant and Captain lists like the Sergeant list but that he simply failed to mention it in his letter.

Without intending to speculate too much further, I note that even if HRD had extended the Lieutenant and Captain lists, there is no indication that the promotions would have been forthcoming. In the fall of 2011, and for at least several months thereafter, Lawrence was facing considerable financial difficulties, leading to demotions, indicating that the City was not in the financial position to make promotions, assuming there were Lieutenant and Captain vacancies. In fact, the Mayor's April 2012 letter acknowledges that only recently had he been able to restore those who had been demoted because of the City's financial difficulties.

The Mayor's April 2012 letter, sent in an untimely manner (approximately six months after the lists were revoked), further makes clear that the City was not aggrieved because the Mayor wrote, "... should a situation arise and I need to fill a Captain or Lieutenant, we don't have an active list right now. ... I respectfully ask that you please extend the Captain and Lieutenant list (sic) to allow future appointments to be made" (Motion Exhibit O) That is to say, the City had not yet been aggrieved because "a situation" wherein the City would need to fill a Captain or Lieutenant position had not yet arisen.

The Appellants' and the City's remaining arguments also fail. Specifically, the City's argument that HRD's denial of its request was arbitrary and capricious because HRD granted Boston's extension request but denied Lawrence's request lacks merit since it appears that Boston's request was timely and Lawrence's request, regarding the Lieutenant and Captain lists, was not. Further, HRD was not required to contact the City when it (HRD) received Mr. Quaglietta's September 29, 2011 letter in view of the explicit text of the Mayor's letter two days earlier. Similarly, that the Appellants and the City reached an agreement to increase the number of Sergeant, Lieutenant and Captain positions shortly before the hearing at the Commission, nearly one year after the Mayor's request to extend the Sergeant list, does not make them aggrieved since the City had yet to determine that there are vacancies to be filled and that the funding to fill the vacancies was available. Finally, HRD's decision to deny the request to extend two lists from the 2008 exams in 2011 or in 2012 after the lists were revoked was not unreasonable, arbitrary or capricious. To the contrary, HRD's decision reflects the duty to maintain the basic merit system, which should include the names of those who are currently qualified.⁷

Conclusion

In view of the foregoing facts and the applicable law, HRD acted reasonably when it denied the request to extend the Lieutenant and Captain lists from the 2008 exam, consistent with civil service law. Since there is no genuine issue of material fact in this regard, the Motion is

⁷ It appears that the City and the Appellants did not explore provisional promotions.

granted and the appeal is hereby *dismissed*.

Civil Service Commission

Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on April 3, 2014.

A True Record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

Shawn M. Quaglietta (Appellant)

Daniel J. Fleming (Appellant)

Michael F. McCarthy (Appellant)

Tsuyoshi Fukuda, Esq. (for HRD)

Sean P. O'Connor, Esq. (for City of Lawrence)

John Marra, Esq. (HRD)